



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fire Security Systems, Inc.
File: B-236132
Date: October 24, 1989

DIGEST

A late hand-carried bid may not be considered except where improper government action was the paramount cause of the late delivery. Such was not the case here where the protester's allegation that the bid was late as the result of an altercation with another bidder in the presence of agency personnel, is refuted by affidavits of the agency personnel which state that they did not see any altercation.

DECISION

Fire Security Systems, Inc., protests the rejection of its bid as late under invitation for bids (IFB) No. GS-07P-89-HUC-0072, issued by the General Services Administration (GSA) for fire safety improvements to a federal building in Albuquerque, New Mexico. The bids were to be opened at 2:30 p.m., June 30, 1989, at a federal building in Fort Worth, Texas. Fire Security's bid was hand-delivered at 2:34 p.m.

We deny the protest.

Fire Security attributes its failure to meet the deadline for the opening of bids to the actions of an agent of another bidder. According to the protester, its representative, who was to hand-deliver the bid, was on the telephone immediately before the bid submission deadline with another company employee receiving information on which the representative was to formulate the final bid. Fire Security alleges that at that time, the agent of another bidder "manhandled the telephone from [the Fire Security representative]." According to the protester, the man also "pushed himself against [the Fire Security representative], looked over his shoulder, interfered with his writing

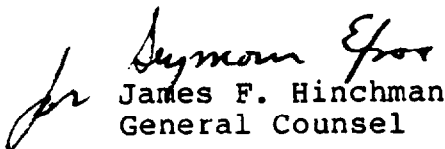
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process and otherwise prevented him from completing his work." Fire Security states that the other bidder's agent then followed its representative "down several flights of stairs before [Fire Security's representative] could evade him." In its protest Fire Security identifies two GSA employees by name who allegedly witnessed the described confrontation at the telephone. The protester contends that because of the actions of the other bidder's agent it was unable to deliver its bid on time, and that GSA had a duty to provide an area where bidders could complete last minute work on their bids.

GSA, however, states that its personnel did not observe the altercation or confrontation as described by Fire Security. GSA has submitted the affidavit of the contracting officer, as well as affidavits of the two GSA employees who Fire Security claims witnessed the alleged altercation. Only one of these employees states that she saw anything at all. That individual states that she only overheard a man ordering another to get off the telephone. She observed no physical threats or actions. Further, the record shows that the bidder whose agent allegedly threatened the protester was not the low bidder, and that bidder's representative has denied that he interfered with the delivery of the protester's bid.

Late hand-carried bids may only be considered for award where improper government action--defined as government action making it impossible for the firm to deliver its bid on time--was the paramount cause for the late receipt. Orange Shipbuilding Co., Inc., B-230285, Mar. 9, 1988, 88-1 CPD ¶ 246. Here, the record does not support the protester's contention that GSA representatives were aware of the alleged interference with the delivery of its bid and unreasonably failed to intervene. Moreover, we are not aware of any requirement that government agencies provided work space for bidders. Consequently, we are not able to conclude that government action, or inaction, was the paramount cause of lateness.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel